

REMARKS/ARGUMENTS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 1-18 and 20-32 are pending in the above-identified application. Claims 1, 7, 15, and 32 are amended. Support for the amendments to Claims 1 and 7 can be found in the specification at numbered paragraph [0036] and Figs. 1 and 2, for example. Support for the amendment to Claim 15 can be found at numbered paragraphs [0035] and [0044]-[0046] and Figs. 1 and 4, for example. Support for the amendment to Claim 32 can be found at numbered paragraphs [0044], [0045] and Figs. 4 and 6A1, and 6A2, for example. No new matter is added.

In the outstanding Office Action, Claims 15-17, 20, 22, 27, and 30-32 were rejected under 35 U.S.C. §112, first paragraph as failing to comply with the written description requirement. Claims 1-3, 5-9, 13, 14, 25, 26, 28, and 29 were rejected under 35 U.S.C. §102(b) as anticipated by European Patent Application EP 0985342 (herein "EP '342"). Claims 15, 16, 22, 27, and 30 were rejected under 35 U.S.C. §102(b) as anticipated by Wosmek (U.S. Patent No. 2,894,733, herein "Wosmek"). Claims 4, 12, 18, and 23 were allowed, and Claims 10, 11, 21, and 24 were indicated as reciting allowable subject matter.

Applicant notes with appreciation the indication that Claims 4, 12, 18, and 23 are allowed and that Claims 10, 11, 21, and 24 recite allowable subject matter.

TRAVERSAL OF REJECTIONS UNDER 35 U.S.C. § 112

Regarding the rejection of Claims 15-17, 20, 22, 27, and 30-31 as rejected under 35 U.S.C. §112, first paragraph, that rejection is respectfully traversed by the present response.

The outstanding Office Action states that the limitation in independent Claim 15 regarding a lack of external supports is not described in the original filing.¹

In amended Claim 15, the term "unsupported by external supports" has been deleted without prejudice or disclaimer, and amended Claim 15 recites, "an auger, including an upper end exposed without obstruction to the wall around an entire circumference of the upper end, and a lower end, disposed within said enclosure." Applicant respectfully submits that support for the above-noted amendment can be found in Figures 1 and 4, in addition to paragraphs [0035] and [0044]-[0046] of the specification which discuss the operation of the mixing apparatus in which the blades of the auger cooperate with the restrictive and non-restrictive sections of the wall of the container. Accordingly, Applicant respectfully submits that the rejection of independent Claim 15 and dependent Claims 16, 17, 20, 22, 27, 30, and 31 under 35 U.S.C. § 112, first paragraph, is overcome.

Regarding the rejection of independent Claim 32 under 35 U.S.C. § 112, first paragraph as reciting subject matter not included in the original disclosure, the feature noted in the outstanding Office Action has been deleted. Amended independent Claim 32 recites:

tops of each of the first and second sides being nearer to the top part of the auger than tops of each of the third and fourth sides, bottoms of each of the first, second, third and fourth sides being the same distance from the bottom part of the auger, and each of said first and second sides being disposed at dissimilar angles relative to said floor.

Two non-limiting examples of the above-noted feature recited in amended Claim 32 can be found in Fig. 6A1 and 6A2. Accordingly, Applicant respectfully submits that the rejection of Claim 32 under 35 U.S.C. §112, first paragraph is overcome.

¹ Outstanding Office Action at 2.

TRAVERSAL OF REJECTION UNDER 35 U.S.C. § 102, EP '342

Regarding the rejection of Claim 1 as anticipated by EP '342, that rejection is respectfully traversed by the present response.

Amended Claim 1 recites:

A mixing apparatus for mixing livestock feed, said apparatus comprising:
a container configured to be pulled in a direction of travel and to receive feed;
said container including:
a floor,
a wall extending away from said floor, such that substantially all of said wall is disposed above said floor, said wall defining a top opening disposed remote from said floor for the reception therethrough of the feed, said floor and said wall defining therebetween an enclosure for the feed received through the top opening;
a discharge opening in said wall; and
an auger disposed within said enclosure, said auger having an axis of rotation extending substantially vertically through the floor,
said wall further including a first side and a second side positioned on opposing sides of the enclosure, said first side and said second side being disposed substantially parallel to the direction of travel of the mixing apparatus,
each of said sides being disposed at dissimilar angles relative to said floor.

Accordingly, the container is configured to be pulled in the direction of travel. First and second sides of the container are disposed substantially parallel to the direction of travel. The first and second sides are disposed at dissimilar angles relative to the floor.

The feature of dissimilar angles of the first and second walls reduces the amount of power required to turn the auger inside the claimed mixing apparatus because the auger does not have to contend with two symmetrical pinch points as occur in conventional augers. During the mixing of feed inside the container, the auger rotates at a constant speed, urging the feed materials around the inside of the container. When the feed encounters narrow cavities at the sides of the container, a restriction point is created. At the restriction point, mixing and cutting of the feed material occurs. The asymmetrical nature of the container

allows the feed to move into wider cavities at the ends of the container, and the feed decreases in velocity and falls down into the cavity created at the wide portions at the ends of the container. In other words, the feed is alternately pinched, cut, and then released. The present inventor has discovered that by making the walls of the container at dissimilar angles relative to the floor, less horse power is needed to create the above-described mixing action.

The outstanding Office Action states that "Claims 1 and 28 discuss an intended direction of travel during an intended use; however, 'the manner or method in which such machine is to be utilized is not germane to the issue of patentability of the machine itself.'"² However, Applicant respectfully submits that amended Claim 1 now recites that the container is configured to be pulled in a direction of travel and to receive feed. Accordingly, amended Claim 1 recites structure providing a direction of travel for the container. Therefore, Applicant respectfully submits that the feature of first and second sides being disposed substantially parallel to the direction of travel does not rely on an intended use of the apparatus, but further defines the first and second sides structurally. Accordingly, Applicant respectfully requests that the feature of first and second sides being disposed substantially parallel to the direction of travel of the mixing apparatus be given patentable weight.

In contrast to the features of amended Claim 1 discussed above, EP '342, as shown in Figs. 2, 3, and 5, merely describes walls of the mixing chamber (1) at identical angles to the floor as seen from the direction of travel. As discussed in the previous Response, nowhere in EP '342 are walls that are substantially parallel to the direction of travel disclosed as having dissimilar angles relative to the floor. Accordingly, Applicant respectfully submits that EP '342 fails to anticipate amended Claim 1.

² Outstanding Office Action at 3 citing *In re Casey*, 152 USPQ 235 (CCPA 1967).

Claims 2, 3, 5, 6, 25, and 28 depend, directly or indirectly, from amended Claim 1. Accordingly, Applicant respectfully submits that Claims 2, 3, 5, 6, 25, and 28 patentably distinguish over EP '342 for at least the same reasons as amended independent Claim 1.

Regarding the rejection of independent Claim 7 as anticipated by EP '342, that rejection is respectfully traversed by the present response.

Amended independent Claim 7 recites substantially similar features to those discussed above regarding amended Claim 1. Accordingly, Applicant respectfully submits that amended independent Claim 7 patentably distinguishes over EP '342 for at least the same reasons as amended independent Claim 1.

Claims 8, 9, 13, 14, 26, and 29 depend from amended independent Claim 7. Accordingly, Applicant respectfully submits that Claims 8, 9, 13, 14, 26, and 29 patentably distinguish over EP '342 for least the same reasons as amended independent Claim 7.

TRAVERSAL OF REJECTION UNDER 35 U.S.C. § 102, WOSMEK

Regarding the rejection of Claim 15 as anticipated by Wosmek, that rejection is respectfully traversed by the present response. Amended Claim 15, recites, in part:

an auger, including an upper end exposed without obstruction to the wall around an entire circumference of the upper end, and a lower end, disposed within said enclosure, said auger having an axis of rotation extending substantially vertically through the floor.

Accordingly, the auger is exposed without obstruction to the wall at its upper end.

The outstanding Office Action states that Wosmek discloses both the presence and absence of the sleeve around the auger. Applicant respectfully traverses this assertion. The outstanding Office Action points to Wosmek, col. 2, lines 9-10, which states,

Preferably and as shown, the upper end of the vertical conveyor 23 is housed within an elongated sleeve 25 which terminates at its lower end in vertically spaced relation to the horizontal conveyor 17, as indicated at 26.

However, Applicant respectfully submits that to the extent that unpreferred embodiments are to be considered when actually taught by a reference, an actually taught unpreferred embodiment is an absolute requirement. In other words, the mere statement in Wosmek that a particular embodiment is preferred does not suffice for disclosure of any number of other possible embodiments not explicitly disclosed. One interpretation of the above-quoted statement from Wosmek is that Wosmek prefers the sleeve to terminate at its lower end in vertically spaced relation to the horizontal conveyor. Under this interpretation, all embodiments of the invention of Wosmek would have a sleeve, but the preferred sleeve would terminate at its lower end. Indeed, this is exactly what is shown in Wosmek. Nowhere in Wosmek is the vertical conveyor (23) shown without the elongated sleeve (25) at its upper part. Accordingly, Applicant respectfully submits that Wosmek fails to disclose at least this feature of amended independent Claim 15.

Claims 16, 22, 27, and 30 depend from amended independent Claim 15 and patentably distinguish over Wosmek for at least the same reasons.

AMENDED CLAIM 32 DISTINGUISHES OVER THE CITED REFERENCES

As discussed above, Claim 32 recites, in part:

tops of each of the first and second sides being nearer to the top part of the auger than tops of each of the third and fourth sides, bottoms of each of the first, second, third and fourth sides being the same distance from the bottom part of the auger, and each of said first and second sides being disposed at dissimilar angles relative to said floor.

Applicant respectfully submits that the cited references fail to disclose at least this feature of amended Claim 32.

EP '342 describes a container (1) as shown in Figs. 1, 3, and 5 with walls with bottoms having different distances from the bottom of the vertical mixing element (2).

Similarly, Wosmek, as shown in Fig. 2, describes different distances between the bottoms of the walls and the vertical conveyor (23).

Accordingly, Applicant respectfully submits that amended Claim 32 patentably distinguishes over the cited references for at least the reasons discussed above.

Consequently, in light of the above discussion and in view of the present amendment, the present application is believed to be in condition for allowance and an early and favorable action to that effect is respectfully requested.

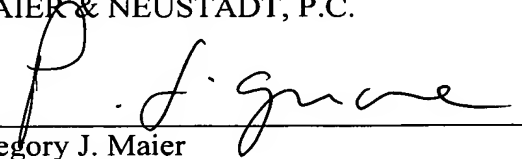
Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.

Customer Number

22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)
LS/rac



Gregory J. Maier
Attorney of Record
Registration No. 25,599

Philippe J.C. Signore
Registration No. 43,922